United States Court of Appeals

for the Second Circuit

APPELLANT'S REPLY BRIEF

75-7316

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United States Court of Appeals

FOR THE SECOND CIRCUIT

P/S

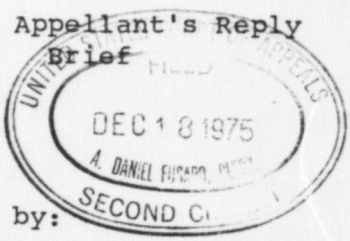
Roger diLeo,
Appellant

Docket No.
75-7316

vs.

Richard Greenfield,
et al
Appellees

Appellant's Reply Brief



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ARGUMENT

Three points in the Appellees' Brief require this short Reply.

1. The Appellees are mistaken in the claim that the vagueness doctrine is limited to application in criminal cases. (Appellees' Brief, pg. 12) While Professor Amsterdam may have reached that conclusion in his classic 1961 article, a good deal has happened over the past 14 years, including the rendition of decisions in the five cases cited in the Appellant's Brief, pg. 15, all of which are instances of successful vagueness challenges to rules or statutes applied in schools.

2. The Appellees inappositely cite Parker v. Levy, 42 USLW 4979 (1974), Appellees' Brief, pg. 13), which is a decision on a question of military law and

which is, by its terms, inapplicable in a civilian context. "'Military law...is a jurisprudence which exists separate and apart from the law which governs in our federal judicial establishment.'" 42 USLW at 4982.

3. The Appellees place principal reliance upon Arnett v. Kennedy, 416 U.S. 134 (1974) a case which is distinguishable on a variety of grounds:

a) The statutory dismissal standard there upheld against a claim of vagueness ("such cause as will promote the efficiency of the service") was fleshed out by specific regulations defining improper conduct, while no such regulations exist under §10-151 (b)(6) Conn. Gen. Stats. Justice

Rehnquist's plurality opinion, concurred in on the vagueness issue by a majority of the Court, takes early notice of the fact that the challenged section of the Lloyd-LaFollette Act is the subject of implementing regulations issued by the Civil Service Commission and the Office of Economic Opportunity. These regulations, Justice Rehnquist observed, have "given further specific content to the general removal standard in subsection (a) of the [Lloyd-LaFollette] Act." 416 U.S. at 141. An examination of the regulations reprinted in the margin of Arnett at pg. 141 demonstrates

that they are quite specific indeed.

b) Arnett's employer, the Office of Economic Opportunity, provides employees with counseling on the interpretation of statutes relating to employment through its General Counsel's Office acting under regulation authorizing the giving of such advice. Justice Rehnquist recognized the importance of this as mitigating the vice of statutory vagueness. 416 U.S. at 142, 160. No similar facility for providing advice is available to Connecticut teachers.

c) The legislative history of the Lloyd-LaFollette Act and the history of its administration under regulation demonstrate that the words whose vagueness was challenged were neither written nor applied "on a clean slate" but rather embodied longstanding principles of employer-employee relationship. These principles serve to give additional meaning to those words. 416 U.S. at 160. No similar history is available to remedy the defect in §10-151(b)(6) Conn. Gen. Stats.

d) The Supreme Court in Arnett showed a proper and traditional deference to an act of Congress by rejecting the claim

of vagueness directed against the Lloyd-LaFollette Act. But in the case at bar the challenge is directed to a Connecticut statute and the Connecticut Supreme Court has recently demonstrated its ready willingness to invalidate such statutes for vagueness. Mitchell v. King, 37 No. 3 Conn. Law J. 4 (July 15, 1975) (Reprinted in Joint Appendix, pg. 40).

e) On its face the language here challenged, "other due and sufficient cause" is more vague than "such cause as will promote the efficiency of the service." The Lloyd-LaFollette Act at least requires that the conduct for which

an employee is discharged be somehow job-related so that the discharge will promote service efficiency. No such limitation occurs in the Connecticut statute whose language would permit a Board of Education to terminate a teacher for off-premises, off-hours conduct having no school connection. Although Appellees' claim(Appeliees' Brief, pg. 10) that the statute should not be so broadly construed, there exists no Connecticut court decision narrowing it as is required under Smith v. Goguen, 415 U.S. 566, 573 (1974). It will be for the Legislature to enact a

narrower provision which does not require construction after this statute has suffered the invalidation to which its inartistry entitles it.

Dated at Hartford, Conn. Dec. 3, 1975.

Appellant

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Proof of Service

This is to certify that I have hand delivered two copies of the foregoing Brief to Leo Rosen, Esq. at his office at One Constitution Plaza, Hartford, on this 3rd day of December, 1975.

Karl Fleischmann

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